BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A(MD)No.382 of 2009
and
M.P.(MD)No.1 of 2009

Commissioner of Central Excise
Central Revenue Building,
Tractor Road, NGO 'A' Colony,
Thirunelveli-627007 ... Appellant / Respondent

-Vs-

M/s.Sterlite Industries (I) Ltd.,
Sipcot Industrial Complex,
Madurai Bye Pass Road, T.P.Puram (Post),
Tuticorin-T N-628002 ... Respondent / Appellant

PRAYER: Civil Miscellaneous Appeal filed under Section 35 G of Central Excise Act, 1944, praying this Court to set aside the final order No.1197/2008, dated 21.10.2008 passed by the Southern Zonal Bench of CESTAT, Chennai in Appeal No.E/EH/267/2008 & E/414/08 (arising out of Order in Original No.06/Commr/CE/2008, dated 08.08.2008 passed by the Commissioner of Central Excise, Tirunelveli).

For Appellant : Mr.K.Prabhu,
Senior Standing Counsel
For Respondent : Mr.Raghavan Ramabadran
For Lakshmi Kumaran @ Sridharan

JUDGMENT

R.SUBRAMANIAN, J.
AND
N.SATHISH KUMAR, J.

The challenge in this appeal is to the order of the Customs, Excise and Service Tax Appellate Tribunal, Chennai (hereinafter referred to as CESTAT) made in the appeal filed by the respondent herein, challenging the refusal of permission to remove the copper anode and copper cathode from the unit at Chinchpada, Silvasa for being converted into continuous copper wire rods to another unit at Piparia, Silvasa.

2.Mr.K.Prabhu, learned Senior Standing Counsel appearing for the appellant would vehemently contended that permission is not a right and it is open to the department to reject the permission, if it is found that the permission granted earlier was erroneous.

3.Mr.Raghavan Ramabadran, learned counsel appearing for the respondent would submit that the fact that the goods are semi finished goods has been accepted by the CESTAT for the earlier years. He would also point out that the Commissioner had rejected permission for the year 2003-2004 and the same was challenged by way of Writ Petition by the respondent, wherein this Court has allowed the Writ Petition and remitted back the matter to the Commissioner for re-consideration. There upon the Commissioner has reconsidered the issue, by his order dated 22.02.2006 and by treating copper anode and copper cathode as semi finished goods, allowed permission. This order of the Commissioner is not challenged by the Department.

4.He would also invite our attention to another order of the Tribunal passed under Rule 4(6) of CENVAT Credit Rules, 2002, which also applies a similar language as that of Rule 16(B) of Central Excise Act, 2002 (hereinafter referred to as 'the Act') and submit that the Tribunal has concluded that copper anode and copper cathode should be treated as partially processed inputs and should be recognized as intermediate product.

5.He also relied on the judgment of the Hon'ble Supreme Court of India in ***Jayaswals Neco Ltd., Vs. Commissioner of Central Excise, Nagpur,*** reported in ***2006 (195) E.L.T. 142 (S.C)***, wherein the Hon'ble Supreme Court has held that having accepted the orders passed by the Tribunal for the earlier years, the department cannot challenge the subsequent orders and contend that earlier orders of the Tribunal are not binding on them. While doing so, the Hon'ble Supreme Court has observed as follows:-

> *"6.This Court in Birla Corporation Ltd., V. Commissioner of Central Excise [2005 (186) E.L.T. 266 (S.C)] relying upon an earlier decision of this Court, held that the department having accepted the principles laid down in the earlier case cannot be permitted to take a contra stand in the subsequent cases. In paragraph 5 of the said judgment it was observed, thus;*
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> > *"In the instant case the same question arises for consideration and the facts are almost identical. We cannot permit the Revenue to take a different stand in this case. The earlier appeal involving identical issue was not pressed and was therefore, dismissed. The respondent having taken*

a conscious decision to accept the principles laid down in Pepsico India Holdings Ltd., (Supra) cannot be permitted to take the opposite stand in this case. If we were to permit them to do so, the law will be in a state of confusion and will place the authorities as well as the assessees in a quandary."

7.Since the point involved in the present case is identical to the point decided in the Hindustan Gas & Industries case (supra) and the department having accepted the principle laid therein to the effect that the inserts did not require any precision machining or that any such machining was done by the appellant, cannot be permitted to take a stand different than the principles laid down in the earlier case."

6.He also added that similar view was also expressed by the Hon'ble Supreme Court in ***Boving Fouress Vs. CCE*** reported in ***2006 (202) E.L.T. 389 (S.C)*** and would further submit that after the order of CESTAT, the respondent has removed the goods and converted them as final product and excise duty has been paid on the final product.

7.It is not in dispute that these two products namely, copper anode and copper cathode are exigible goods. Rule 16(B) of the Act, provides that the manufacturer can be permitted to transfer these goods without payment of duty from one unit to another unit for being converted into finished product. Permission was granted by the Commissioner of Central Excise for such removal in the earlier years. However, when permission was sought for by the respondent for the year 2008, the Commissioner, by his order dated 08.08.2008, rejected the permission on the ground that the copper anode and copper cathode are finished products and therefore, Rule 16(B) of the Rules, will not stand attracted. The said order was challenged by the respondent before the CESTAT in Appeal No.E/414/08. The Tribunal held that the copper anode and copper cathode are not finished goods and the said decision has been accepted by the department in the earlier years. Unless it is shown that there is some other change in the manufacturing process, the Commissioner cannot treat the goods, which has been accepted as semi finished goods in the earlier years, as finished goods for the current year. The Tribunal has also found that the Commissioner had overlooked the fact that the goods were cleared to their sister units for conversion into the finished goods which were to be removed for home consumption on payment of duty or for export without payment of duty. The Tribunal has also recorded the finding that there is no revenue loss to the Government, because of such permission being granted.

8.In view of the above, we do not find any reason to interfere with the order of the CESTAT, hence, this Civil Miscellaneous Appeal fails and is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Myr

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to M/s.K.PRABHU, Advocate (SR-7693[F] dated 22/02/2022)

C.M.A.(MD)No.382 of 2009
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